

REMARKS

Claims 1, 2, 8, 9 and 27-43 are pending. Claims 3-7 and 10-26 have been canceled. Claims 29-43 are new. Claims 1, 2, 8, 9, 27 and 28 have been allowed. The applicants respectfully request entry of this amendment and a supplemental notice of allowance that reflects the new claims in view of the following remarks.

In the Notice of Allowability mailed on 12 January 2005, claims 3-7 and 10-19 were canceled by examiner's amendment. This cancellation was not authorized by the applicants and was improper according to standard restriction practice. New claims 29-43 are submitted to reintroduce the subject matter of claims 3-7 and 10-19. New claims 29-33 correspond to claims 3-7, and new claims 34-43 correspond to claims 10-19.

Claims 29-43 depend, directly or indirectly, on claim 1, which has been allowed. None of claims 29-43 is readable on the elected species; however, they depend, directly or indirectly, on an allowable generic claim. Therefore, claims 29-33 are considered to be in condition for allowance.

The undersigned called examiner Dunwoody on or about 23 March 2005 to ask the basis for the cancellation of claims 3-7 and 10-19 and to request that the cancellation be reconsidered. The undersigned argued that claim 1 is an allowable generic claim and that claims that depend on allowable generic claims should be rejoined. Examiner Dunwoody refused to reconsider his decision and said that the applicants failed to dispute the statement in the initial restriction requirement that none of the claims is generic. In a subsequent call, the undersigned reported to examiner Dunwoody that rejoinder was requested in the amendment of 20 May 2004 along with

a statement that claim 1 is generic to claims 3-7 and 10-19. However, examiner replied that this was too late in the prosecution and indicated that he did not wish to discuss the matter further.

In a third phone call, the undersigned called Supervisory Patent Examiner Stodola to confirm the patent office policy in canceling such claims. Mr. Stodola said that claims that depend on an allowable generic claim are not automatically canceled and that he would review the application. He stated that the proper procedure to request relief is to file a Rule 312 amendment that reintroduces the canceled claims. Therefore, the applicants are submitting this amendment.

The restriction requirement was mailed on 9 April 2003. The first full paragraph of page 3 of the restriction requirement states the following:

"Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141."

Claim 1 is generic to the species of claims 3-7 and 10-19, and claims 3-7 and 10-19 are in dependent form. Therefore, claims 3-7 and 10-19 should not have been canceled.

As to the examiner's statement that the applicants did not dispute the statement that no generic claim exists in the application, there is no requirement to make such an argument in 37 CFR 1.141. Further, the statement that "none of the claims are [sic] generic" in the restriction requirement was true at that time it appeared, because claims 20-26 were still pending. Therefore, there was no reason to dispute the statement. The genericness of claims can change during the prosecution. Therefore, the question of whether a generic claim exists should be answered upon allowance of an independent claim. The examiner should have considered the

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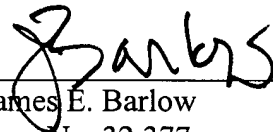
genericness of claim 1 with respect to claims 3-7 and 10-19 upon the allowance of claim 1 and before canceling claims 3-7 and 10-19.

Furthermore, the examiner is incorrect that the applicants failed to argue that there was a generic claim. The applicants argued that claim 1 is generic to 3-7 and 10-19 in the amendment of 4 December 2003 and in the amendment of 20 May 2004. Therefore, at every opportunity, the applicants requested rejoinder and asserted the genericness of claim 1.

In view of the foregoing, the applicants respectfully request entry of this amendment and allowance of new claims 29-43. A timely notice to that effect is respectfully requested.

No fee is thought to be required by this amendment; however, please charge any unforeseen fees that may be due to Deposit Account No. 50-1147.

Respectfully submitted,


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